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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,925	04/26/2000	John Albert Kembel	10351-0007	1658
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INNOVATION MANAGEMENT SCIENCES			AVELLINO, JOSEPH E	
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LOS ALTOS, CA 94023-1169			2143	

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/558,925

**Applicant(s)**

KEMBEL ET AL.

**Examiner**

Joseph E. Avellino

**Art Unit**

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Claims 31-68 are pending in this application; claims 31, 42, 50, and 62 independent.

***Claim Rejections - 35 USC § 101***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 70-75 do not produce a “useful, concrete, and tangible result” rather the object merely provides data, which is not a tangible result. This is merely data per se, and is not considered statutory under 35 USC 101, because this data does nothing. See State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02.

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 31-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furst (USPN 6,297,819).
4. Referring to claim 31, Furst discloses a method for presenting Internet content to a user of a computing device, comprising:

retrieving a first internet content that is programmed in a format readable by a web browser program (Figure 3; col. 7, line 35 to col. 8, line 46); and

rendering the first internet content to provide a visual manifestation of the first internet content on an output means of the computing device, wherein the visual manifestation of the first internet content is not confined by a window of a Web browser program, wherein the first Internet content comprises a definition of a frame for the visual manifestation (the Office takes the term “frame” to mean “outline or shape”, and it must be inherent that the system of Furst to define a frame of the tool since third parties define the icon and download content from the internet which describe specifically how to render the icon in the bar or the free form graphic in which to display the tool, see col. 7, lines 44-50) (Figure 5; col. 8, lines 39-46).

Furst does not explicitly state that the frame and internet content are rendered independently from a web browser program, however Furst does disclose that the elements can take other forms, such as free-form graphics without enclosing boxes or window decorations and that the tool windows are updated by the tools with the information generated by the application programs (col. 8, lines 15-25, 40-45). This would indicate to one of ordinary skill in the art that the tool is independent of the browser window. By this rationale, It would have been obvious to one of ordinary skill in the art that the frame and internet content are rendered independently from the web browser program.

5. Referring to claim 32, it is inherent that the definition of the frame is programmed in a format readable by a web browser program since if it is displayed by the web browser program it inherently must be programmed in a way such that the program is able to read the definition of the frame.

6. Referring to claims 33 and 34, Furst discloses the invention substantively as described in claims 31 and 32. Since claims 33 and 34 defines a second visual manifestation exactly the same as claims 31 and 32, and Furst discloses that multiple bar icons can be shown at the same (Figure 5, 502, 504, 506). Furst discloses another second internet content which produces a second visual manifestation not confined by a window of a browser.

7. Referring to claim 37, Furst discloses the Internet content comprises JavaScript (Jscript) (col. 5, line 2).

8. Referring to claim 42, Furst discloses the invention substantively as described in the claims listed above. Furst furthermore discloses a second visual manifestation of a frame through which the first visual manifestation is presented (the tool icon and the definition of the frame as seen in Figure 5, 502, 504, 506).

9. Referring to claim 43, Furst discloses the receiving step comprises receiving the internet content from the web (Figure 3 and related portions of the disclosure).

10. Referring to claim 44, Furst discloses the receiving step comprises retrieving the internet content from a memory of the computing device (it is understood that the web page must be stored in memory before it can be rendered) (Figure 3).

11. Claim 46 is rejected for similar reasons as stated above.

12. Claims 50-77 are rejected for similar reasons as stated above since all limitations taught by the newly added claims are either expressly taught or implied by Furst. Furthermore it has been held obvious to make combined components separable. See *Nerwin v. Erlichman* 168 USPQ 177 (1969).

13. Referring to claims 35 36, and 45, Furst discloses the invention substantively as described in claim 31. Furst does not specify that the internet content comprises XML codes and XML tags for the frame definition. However it is well known that XML code is commonly downloaded over the Internet (i.e. web pages) and that in defining the frames of these web pages, XML tags are used in order to correctly define the frame. By this rationale it would have been obvious to one of ordinary skill in the art to include XML tags to the system of Furst to provide a more robust method of coding the icons and window bars associated with the invention, thereby allowing another method to provide third parties to code applications easily.

14. Referring to claims 38, Furst discloses the invention substantively as described above. Furst does not specifically disclose that JavaScript tags are used to define the frame of the window and bar. However it is well known that JavaScript has the capability of defining a frame for the tool and one of ordinary skill in the art would find it obvious to do so. By this rationale it would have been obvious to one of ordinary skill in the art to include JavaScript tags in the code in order to provide a more robust method of coding the icons and windows and a bar in order to provide a language in which many browsers understand, thereby increasing the accessibility of the invention.

15. Referring to claims 39-41 and 47-49, Furst discloses the invention substantively as described in claim 31. Furst does not disclose that the Internet content includes creating a media player, a calculator or accessing streaming media. However these functions are well known to exist and one of ordinary skill in the art (i.e. calculation applets are prevalent on the web, media players can be inserted into web browsers, which would stream media from servers) would find it obvious to be able to encode a visual manifestation of these applications in order to provide the viewing public a copy of the application, thereby increasing the knowledge of the general public.

### ***Response to Arguments***

16. Applicant hereby traverses the Office's assertions that various features of Applicant's invention is common knowledge to one of ordinary skill in the art.

17. With regards to claims 35 and 45, Applicant is invited to look at Maslov (USPN 6,538,673) for the recitation that the first internet content comprises XML codes and tags (e.g. abstract).

18. With regard to claim 36, Applicant is invited to look at Morrison, Michael (XML Unleashed published December 21, 1999) Chapter 20 describes that JavaScript supports scripting XML and this would lead one of ordinary skill in the art for using XML codes and tags to define a frame which can be seen in ¶ 20.

19. With regards to claims 37, 38, and 46 Applicant is invited to look at Flanagan, David (JavaScript: The definitive Guide, 3<sup>rd</sup> edition published June, 1998) wherein JavaScript can be used to define the size and location of the frame of the page (section 13.7.1).

20. With regards to claims 39 and 47 Applicant is invited to look at Strandberg et al. (USPN 6,816,880) such that a calculator can be visualized outside of a window of a web browser program (i.e. popup calculator) (col. 17, lines 50-52). Furst discloses the recitation that the internet content of a frame for the visual manifestation is done by the Internet content (col. 12, lines 15-20) and it would be obvious to one of ordinary skill in the art to combine Strandberg with Furst since Furst discloses that other kinds of component applications can be developed and distributed easily (col. 11, lines 15-20). This would lead one of ordinary skill in the art for other client tools to incorporate to the



system of Furst, eventually finding Strandberg and its ability to utilize a radio button bar to initialize applets of various applications.

21. With regards to claims 40, 41, 48, and 49, Applicant is invited to look at Nishizawa (USPN 6,842,779) such that a streaming media player can be visualized outside of a window of a web browser program. Applicant will find in col. 4, lines 26-35 the recitation that the agent program can emit music or video without running browser software. Furst discloses the recitation that the internet content of a frame for the visual manifestation is done by the Internet content (col. 12, lines 15-20) and it would be obvious to one of ordinary skill in the art to combine Nishizawa with Furst since Furst discloses that other kinds of component applications can be developed and distributed easily (col. 11, lines 15-20). This would lead one of ordinary skill in the art for other client tools to incorporate to the system of Furst, eventually finding Nishizawa and its novel method of agent programs which run autonomously without running browser software.

22. Applicant's arguments filed January 3, 2006 have been fully considered but they are not persuasive.

23. In the remarks, Applicant argues, in substance, that (1) Furst does not disclose the frame and first internet content rendered independently from a web browser program

24. As to point (1) Applicant's recitation of cited passages is correct, however the rationale Applicant provides is incorrect. Applicant attempts points to specific points within the specification to demonstrate what is meant by the term "independent", however none of those cited passages clearly demonstrate that the specification enables Applicant's rationale for how the term should be applied. Applicant points to page 20, line 18 of the specification, however this merely shows that the content is not trapped in a third party viewer. This is met by the "client browser" of Furst, which is different than the web browser of Furst, since it is disclosed that the client can adjust their positions themselves, and, if desired by the user' positioning them such that they look "attached" to the *web browser* (col. 8, lines 20-38). The content of the "client browser" is not trapped in a "third party viewer" as described by Applicant, since the third party viewer would be the web browser, not the client browser. Furthermore Applicant states on page 33, lines 17-18 which states that the definition of the NIM includes everything that is needed for the NIM to be rendered and filled with internet content. This can also be met by the "client browser" of Furst, since the client browser contains information and can also be rendered as "free-form graphics displayed without enclosing boxes or window decorations" (col. 8, lines 40-48). In any event, Applicant has not provided proper support for Applicant's interpretation of the phrase "rendered independently from a web browser program". The "client browser" is in itself, a separate browser application, which can communicate different information and be used to utilize various "tools" for the client while still being able to be rendered without enclosing boxes

or window decorations as free-form graphics. Applicant is invited to specifically point out where it is *defined* by the specification the term "independent" and how this differs from the use in Furst. By this rationale, the rejection is maintained.

Furthermore applicant is not claiming that "no web browser program need be running or even accessed in order to render the frame and content", rather Applicant is claiming "the frame and first Internet content rendered independently from a Web browser program" (claim 31). Applicant is reminded that "although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims". See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

26. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JEA

August 29, 2006



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